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VIRLYNN TINNELL
SUPERIOR COURT CLERK

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MOHAVE**

9 STATE OF ARIZONA,

10 Plaintiff,

11 vs.

12 JUSTIN JAMES RECTOR,

13 Defendant.

No. CR-2014-1193

STATE'S RESPONSE TO BOTH
DEFENDANT'S REQUEST FOR
MOTION FOR PRESERVATION OF
ALL EVIDENCE

And

DEFENDANT'S MOTION TO ORDER
STATE TO PROVIDE NOTICE TO
DEFENSE BEFORE DISPOSAL OF
ANY EVIDENCE IN THIS CASE

14
15 COMES NOW, the State of Arizona, by the Mohave County Attorney and through
16 the undersigned deputy, Gregory A. McPhillips, and respectfully responds to defendant's
17 motion to preserve evidence.

18 ***What the State intends to do***

19 The State's main concern is that some evidence may be consumed in the testing
20 process. The State is allowed to test the items the State gathered as evidence—even if
21 such testing leads to consumption. If consumption occurs, then defendant can argue for
the appropriate sanction—sanctions which the Court may, or may not, grant based on the
specific facts.

The State is sensitive to defendant's concerns that all physical evidence be
preserved and be made available to the defense for inspection and testing by defense.
To the degree that the State's investigation does not require consumption of evidence,
the State intends to preserve the evidence. Defendant cites *Brady v. Maryland*. The

1 *Brady* rule is intended as a shield not a sword. The *Brady* evidence rule is not intended to
2 hamper the State's investigation.

3 At this point, the State has disclosed 1110 pages of disclosure and over 50
4 computer discs of disclosure. Numerous items of physical evidence have been
5 disclosed. Much of this disclosure has been in the possession of defendant for months.
6 Yet, the defendant does not specify what evidence should be preserved. Such a "blanket
7 request" does not help the State identify defendant's evidentiary concerns.
8 Communication with undersigned counsel will best resolve defendant's concerns. Once
9 defendant makes specific requests, to undersigned counsel, then the State can decide
10 how to manage each request.

11 To the extent that the State can preserve such evidence, the State intends to do
12 so. With that concern in mind, the State will not confine the examination of evidence to
13 the dictates of the defendant.

14 **Sanctions for the destruction of evidence already exist in well-established case
15 law**

16 Cases like *Brady v. Maryland*, and its progeny, and jury instructions such as the
17 Willits instruction have established the manner by which a failure to preserve evidence is
18 handled. The defense presents no legal, or factual, reason for the Court to issue a
19 prospective prophylactic order in this case.

20 Further, defendant provides no guidance to the court, or notice to the State, as to
21 1) what would trigger a violation of the court order, or 2) what the sanction for violating the
22 order would be. If such an order is granted, then the failure to preserve an
23 inconsequential item could lead to the sanction of dismissal of charges. Such a result
24 would be stupid. Courts work best when they make rulings based on facts determined in
25 court, here defendant wants a "blanket order" based on no facts at all.

Sanctions for the destruction of evidence already exist in well-established case
law. Defendant's motion should be denied.

1
2 The case law cited by defendant does not support his request for an order from the
3 court requiring notice before disposal of evidence

4 Defendant cites *State v. Hannah*. In the *Hannah* case, seized evidence was later
5 destroyed inadvertently. By definition "inadvertent" is an unintentional lack of care.


6 Obviously, the BHCPD and the FBI do not want to inadvertently destroy evidence. In fact,
7 both agencies have protocols in place for the safe handling of evidence. No order by the
8 court can stop what may later be done unintentionally. Therefore, a court order will not
9 protect the evidence in this case from an unintentional lack of care.

9 **Conclusion**

10 To the extent that the State can preserve such evidence, the State intends to do
11 so. The State will not confine the examination of evidence to the dictates of the
12 defendant. THEREFORE, defendant's motion should be denied.

13 RESPECTFULLY SUBMITTED THIS 11TH DAY OF MARCH, 2015.

14 MOHAVE COUNTY ATTORNEY
15 MATTHEW J. SMITH

16 By 
17 DEPUTY COUNTY ATTORNEY
18 GREGORY A. MCPHILLIPS

19 A copy of the foregoing
20 sent this same day to:

21 HONORABLE LEE F. JANTZEN
22 SUPERIOR COURT JUDGE

23 RONALD S. GILLES
24 LEGAL DEFENDER
25 Mohave County Legal Defender's Office
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By 
Rector/CR-2014-1193